

[By Thatcher Moats](#)

As a Republican presidential primary that has entered new realms of campaign spending continues, Vermont Rep. Peter Welch is urging the commissioner of the Internal Revenue Service to root out any groups that are primarily political and abusing their status as tax-exempt, nonprofit "social welfare" organizations.

Welch, a Democrat, is writing to IRS Commissioner Douglas Shulman this week asking him to investigate whether any of the groups "are improperly engaged in political campaign activity." Welch is circulating the letter among fellow lawmakers before he sends it to Shulman.

Welch declined to single out specific groups that may be breaking the law but said he is focused on the issue because of news reports showing "multimillion-dollar expenditures" by nonprofits registered as 501(c)(4)s.

"It's been on politically oriented media campaigns," said Welch. "This is not about a specific group. It's about applying the law and putting a light on this end run around the law."

IRS regulations are intended to limit how much political activity the 501(c)(4) "social welfare" groups can engage in and what type.

According to the IRS: "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."

The groups can engage in some political activity "so long as that is not its primary activity," according to the IRS.

The nonprofit groups have been at the center of a controversy in recent days as news reports have emerged showing that the IRS already is giving some applicants for nonprofit status greater scrutiny. As tea party groups have applied to be 501(c)(4)s, the IRS has sent the groups questionnaires asking about their political activities, leading the groups to accuse the IRS of harassment.

There also are powerful existing groups that are 501(c)(4)s that are viewed as primarily political. These include groups aligned with both Democrats and Republicans, such as GPS Crossroads, founded by Karl Rove, the former political adviser to President George W. Bush, and Priorities USA, founded by former White House aides to President Barack Obama.

There are two problems with the nonprofits becoming overly political, said Welch.

There are many legitimate social service groups doing good work, and he doesn't want "their reputation compromised by politically oriented groups abusing the IRS provisions."

In addition, 501(c)(4)s don't have to disclose their donors.

"I favor transparency," said Welch.

Though the law says a 501(c)(4)'s "primary activity" can't be politics, it's hard to define what that is, said Tracey Bolotnick, an attorney with Hurwit & Associates in Newton, Mass., a firm that specializes in the nonprofit sector.

"The truth is, there's not a lot of concrete guidance on it," said Bolotnick.

Bolotnick said some of her riskier nonprofit clients spend 49 percent of their resources on political activity to make sure it's not the "primary activity." Others are more conservative and limit political activity to around 30 percent.

The main advantage of being a 501(c)(4) is that you don't have to disclose donors, said Bolotnick, but she doesn't believe that will last.

"That's something of a loophole that will be closed by legislation or the courts, but for now it's still an option," she said.

The Vermont Public Interest Research Group and Vermonters for Health Care Freedom are among the 501(c)(4)s active in Vermont's political scene.

Officials at the two organizations said they stay on safe legal ground by not opposing or supporting candidates for office, though they advocate for and against policies in the Legislature.

"We can do education, we can organize, we can sponsor events, we can do advertising for issue advocacy, we can even lobby for issue advocacy, but what we cannot do — and where the line gets very, very clear — is we cannot advocate in any communication or activity ... for people to elect a candidate or candidates or defeat a candidate or candidates," said Jeff Wennberg, executive director of Vermonters for Health Care Freedom.

Campaign for Vermont, another 501(c)(4), was accused by the Vermont Democratic Party recently of crossing that line with an ad critical of Gov. Peter Shumlin, but the state attorney general's office determined the group made no violation.

In another campaign finance-related move, Welch plans to urge President Obama to make appointments to the Federal Election Commission when the Senate takes its next recess from April 2 to April 13. Five out of six members of the commission are serving past their term, and it's time for a new panel, said Welch, because the FEC isn't doing its job when it's needed most.

The Senate has failed to confirm presidential nominees, said Welch, so Obama would be justified using his authority to appoint the commissioners during the Senate's next recess.

With "super PACs" holding a major influence over the presidential election, the FEC needs to be more active in defining what's legal and what isn't, said Welch.

"It's an enormous gray area, and super PAC operators are driving Mack trucks through the loopholes," said Welch.